

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV351-03-MU

ALFRED MILLER JR.

Plaintiff,

v.

MECKLENBURG COUNTY JAIL,
SHERIFF JIM PENDERGRAPH

Defendant.

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed August 10, 2005. (Document No. 1.)

Plaintiff alleges in his Complaint that he tripped in his cell on a "lump of cement and steel above floor level in my room." He admits that the officer of duty called in a code for a medical emergency and was taken to medical where he was seen for by a doctor for his injuries and x-rays were taken.

Plaintiff seeks to sue Sheriff Pendergraph in his official and individual capacity since he is responsible for "ensuring [sic] all safety at the facility." Plaintiff requests this Court to serve "summons on Mr. Pendergraph and allow [him] to be placed on a docket in court."

A cause of action under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Plaintiff's Complaint does not state a cause of action that is cognizable under 42 U.S.C. § 1983 in that he has not stated a constitutional violation. If anything, Plaintiff's complaint sounds more like a tort violation for negligence than a constitutional violation. However, negligence in the context of a § 1983 claim is simply not

sufficient to state a claim for relief.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint is
Dismissed for failure to state a claim for relief.

Signed: August 15, 2005

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

